

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF TENNESSEE

In re:

No. 96-12478

Chapter 7

ON-CALL, INC.

Debtor(s)

RICHARD P. JAHN, JR., TRUSTEE

Plaintiff

v.

Adversary Proceeding

No. 98-1089

VOLUNTEER BANK & TRUST and  
M.T. HAYMES AND COMPANY, INC.

Defendant

**MEMORANDUM AND ORDER**

The defendant, Volunteer Bank & Trust Co., has filed a motion which, among other things, asks the court to stay all pretrial matters. The basis of the motion to stay is the motion for withdrawal of reference contained in the same combined motion. Bankruptcy Rule 5011(c) provides that the court may stay, on such terms and conditions as are proper, proceedings pending before disposition of a motion for withdrawal. The mere filing of a motion for withdrawal does not stay the proceedings. *Fed. R. Bankr. P. 5011(c)*.

In deciding whether to grant a stay, the court considers the same criteria that a district court would consider under *Fed. R. App. P. 8. Stephenson v. Rickles Electronics & Satellites (In re*

*Best Reception Systems, Inc.*), 219 B.R. 988 (Bankr. E. D. Tenn. 1998).<sup>1</sup> Those criteria are (1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits, (2) whether the applicant will be irreparably injured without a stay, (3) whether issuance of the stay will substantially injure other parties interested in the proceeding, and (4) where the public interest lies. *Hilton v. Braunskil*, 481 U.S. 770, 776, 107 S.Ct. 2113, 2119, 95 L.Ed.2d 724 (1987).

The Sixth Circuit balances the first and second criteria. The more serious the harm that will result to the moving party if the court denies the stay, the lower the standard for showing a likelihood of success on the merits. *Michigan Coalition of Radioactive Material Users, Inc. v. Griepentrog*, 945 F.2d 150 (6th Cir. 1991) *rev'd on other grounds* 954 F.2d 1174 (6th Cir. 1992). In this case the debtor can not prevail even under this balancing approach.

The only harm asserted is that without the stay the district court would need to “catch up” on prior developments in this adversary proceeding. Presuming there is a withdrawal of the reference, the district court may withdraw the reference only for purposes of trial. The district court can allow this court to address discovery and other pretrial matters subject to review upon proper objection. *Star Hosiery, Incorporated v. Morganton Dyeing & Finishing Corporation*, No. 1:96-CV-494, (E.D. Tenn., April 16, 1997)(Judge Collier). Accordingly,

It is ORDERED that the motion to stay proceedings is DENIED.

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<sup>1</sup> For unknown reasons, this case does not appear in bound volume 219.

This memorandum constitutes findings of fact and conclusions of law as required  
by *Fed. R. Bankr. P.* 7052.

ENTER:

BY THE COURT

entered Jan. 14, 2000

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R. THOMAS STINNETT  
UNITED STATES BANKRUPTCY JUDGE